

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BCS SERVICES, INC., et al.,)	
)	
Plaintiffs,)	
v.)	No. 07 C 1367
)	Consolidated with No. 05 C 4095
)	
HEARTWOOD 88, LLC, et al.,)	Chief Judge James Holderman
)	
Defendants.)	

MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs Phoenix Bond & Indemnity Co. and BCS Services, Inc. respectfully move this Court pursuant to Federal Rule of Civil Procedure 58(d) to enter final judgment on a separate document.

Rule 58 requires all judgments (with exceptions not relevant here) to be set forth on a separate document. *See* Fed. R. Civ. P. 58(a). The purpose of this requirement is, among other things, to ensure that the time for appeal does not linger indefinitely. *See* Fed. R. Civ. P. 58 Advisory Committee Notes (2002 Amends.). Federal Rule of Appellate Procedure 4(a) conditions the filing of a Notice of Appeal on the district court's entry of final judgment, and appeals of orders that do not comply with Rule 58 have been dismissed for want of appellate jurisdiction. *See, e.g.,* *Foremost Sales Promotions, Inc. v. Director, Bureau of Alcohol, Tobacco and Firearms*, 812 F.2d 1044, 1045 (7th Cir. 1987); *Rappaport v. United States*, 557 F.2d 605, 605-06 (7th Cir 1977).

On August 24, 2010, the Court entered a minute order (the “8-24 Order”) granting all pending motions for summary judgment filed by various defendants. (Dkt. No. 816)¹ The 8-24 Order states, among other things, “[w]ritten opinion to follow within a few days.” The 8-24 Order, on its face, adjudicates all claims as to all parties but does not order the entry of judgment.

Entry of a final judgment is necessary here because the 8-24 Order does not satisfy Rule 58. As the Seventh Circuit has recently noted, “[t]he grant of a motion for summary judgment is not one of the exceptions to the separate document requirement listed in Rule 58(a), so a separate document [is] required in [such a] case to have a proper Rule 58 judgment.” *Perry v. Sheet Metal Workers’ Local No. 73 Pension Fund*, 585 F.3d 358, 361 (7th Cir. 2009). *See also Rappaport*, 557 F.2d at 605-06 (distinguishing a “one sentence minute order ... ruling on a motion for summary judgment” from a separate document that complies with Rule 58). The fact that the 8-24 Order may envision or direct a judgment is likewise insufficient for purposes of Rule 58. *See id.*

¹ The Court entered a corresponding minute order in the consolidated case on the same day granting motions for summary judgment that were pending in that case. (Dkt. No. 657 in Case No. 05-C-4095.)

WHEREFORE, Plaintiffs BCS Services, Inc. and Phoenix Bond & Indemnity Co. respectfully request the Court enter final judgment pursuant to Fed. R. Civ. P. 58.

Dated: September 1, 2010

Respectfully submitted,

PLAINTIFFS PHOENIX BOND & INDEMNITY
CO. and BCS SERVICES, INC.

By: /s/ Jonathan S. Quinn
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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2010, a copy of the foregoing **Plaintiffs' Motion For Entry Of Final Judgment**, was filed electronically. Notice of this filing will be sent by e-mail to the following parties by operation of the Court's electronic filing system [or by U.S. Mail, postage pre-paid, to anyone unable to accept electronic filing]. Parties may access the filing through the Court's system.

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